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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,452	03/26/2004	David W. Galloway	1821-001-03	4007

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EXAMINER

KUHNS, SARAH LOUISE

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/811,452

Applicant(s)

GALLOWAY, DAVID W.

Examiner

Sarah L Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 20-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-10 and 20-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

Claims 11-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on December 6<sup>th</sup>, 2004.

***Specification***

The disclosure is objected to because of the following informalities: On page 4, at lines 9-13, applicant discloses a measure of strength in terms of g/cm, which is an improper unit for a measure of strength. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear what applicant means to claim because the measurements claimed are not proper measurements of strength.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Devro Limited, WO 92/01394.

In regard to claims 1 and 7, Devro discloses an edible protein matrix for use in creating edible compositions comprising an intermediary film having greater than 50% processed protein by weight (page 6, lines 35-36 and claim 9), which would inherently have the strength claimed by applicant.

In regard to claim 2, Devro discloses the processed protein being derived from a non-synthetic mammalian and/or aquatic protein (page 5, line 36 – page 6, line 10).

In regard to claim 4, Devro discloses the intermediary film further comprising a starch (page 6, lines 20-21).

In regard to claim 5, Devro discloses the intermediary film further comprising an oil (page 6, lines 25-33).

In regard to claim 6, Devro discloses the intermediary film further comprising a surface adjunct for modifying the surface characteristics of the film (page 10, lines 34-37).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Devro, as applied to claims 1, 2, and 4-6 above, in further view of Fetzer et al., U.S. Patent 4,133,901. Devro fails to disclose the moisture content of the intermediary film. Fetzer discloses an edible protein film with a moisture content ranging from 8-50% (column 7, lines 4-10). It therefore would have been obvious to use a moisture content of at least 25% in the invention of Devro in order to allow for the desired flexibility of the film and also because such a concentration was taught to be ideal for certain types of products, as taught by Fetzer (column 45, lines 19-30).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Devro, as applied to claims 1, 2, and 4-6 above, in further view of Nakajima, U.S. Patent 4,670,276. Devro discloses the processed protein being derived from fish skin (page 5, line 36 – page 6, line 10), but does not disclose the use of surimi. Nakajima discloses an edible protein matrix comprising an intermediary film, wherein the processed protein is surimi (column 2, lines 16-21). It therefore would have been obvious to utilize surimi as the processed protein in the invention of Devro in order to achieve the desired taste of the product.

Claims 8, 9, and 20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devro, as applied to claims 1, 2, and 4-6 above, in further view of Food Packaging Technology.

In regard to claim 9, Devro discloses an intermediary film being formed into an enveloping structure, but does not specify the manner in which the pouch is formed from the film. However, it was well known to one of ordinary skill in the art to form a pouch wherein two intermediary films are opposed to each other and selected portions thereof are bonded to one another, as evidenced by Food Packing Technology (pg. 136, Figure 29.15), and therefore, it would have been obvious to use such a conventional method to form the pouch of Devro.

In regard to claims 20, 26, and 27, Devro discloses an intermediary film having greater than 50% processed protein by weight (page 6, lines 35-36 and claim 9) being formed into an

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enveloping structure to retain edible foodstuffs placed therein (page 13, lines 29-31). Devro does not specify the manner in which the enveloping structure is formed, but it was well known to one of ordinary skill in the art to bond film into an enveloping structure through curing as evidenced by Food Packaging Technology (pg. 136, Heat Forming Methods), and therefore it would have been obvious to use such a conventional method in forming the pouch of Devro.

In regard to claims 8, 21 and 22, Devro does not specify the manner in which the pouch is formed from the film. However, it was well known to one of ordinary skill in the art to form a pouch from a single film and also to have a portion of the pouch not bonded to form an opening into the envelope, as evidenced by Food Packaging Technology (pg. 135, Figure 29.14 and pg. 137, Figure 29.16). It therefore would have been obvious to use such conventional methods to form the pouch of Devro.

In regard to claim 23, Devro discloses the processed protein being derived from a non-synthetic mammalian and/or aquatic protein (page 5, line 36 – page 6, line 10).

In regard to claims 24 and 25, it is noted that the addition of a design to the package does not impart patentability to the claims, *per se*.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Viskase Corporation, EP 0 935 921 A1, discloses an edible, water insoluble film which is a blend of polysaccharide and protein. Fuji Oil Company, EP 0 646 318 A1, discloses a process for producing an edible proteinaceous film.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK



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